

1 without impinging on the franchise, and determining
2 whether that opinion was still good law today or
3 whether it was subject to change.

4 Q. Do you recall a discussion that if a second
5 brand operation appeared to be desirable and the
6 Kramer memo was still good law --

7 MR. WALLINGFORD: Well, wait a minute.

8 MR. HOLSTEAD: Let me finish my
9 question.

10 MR. WALLINGFORD: Okay.

11 Q. [Mr. Holstead] -- and the Kramer memo was
12 still good law, that the way to get around the problem
13 was limit second brand operations to corporate cities
14 and not do any second brand operations in licensee
15 cities? Because that appears to me what Item 4 is
16 saying.

17 A. Well, I don't have a specific independent
18 recollection at the moment, but it's probable that
19 that was one of the alternatives that was discussed.

20 Q. All right. Was that alternative ever
21 implemented, that Avis under any guise would start a
22 second brand operation in a corporate city?

23 A. No, not that I'm aware of.

Exhibit 2

Page 31 of 95

24 Q. Okay. They were just put on hold and died
25 while you were at Avis?

A 45420

1 A. Well, I don't know that we ever implemented any
2 second brand operation.

3 Q. Okay. Mr. Schaffer, on over a page or two,
4 still under the date 1-6-81, the top reference is
5 "Wizard." And down the page is a reference to Alaska.
6 Can you read that, or has that been blanked out?

7 A. Yeah, I can read it. I haven't read it, but I
8 can read it.

9 Q. Why don't you read it, please.

10 [Pause]

11 A. I've read it.

12 Q. All right. In summary, what these notes tell
13 me is that the Alaska license was issued in 1965
14 before statehood, had been further amended, there were
15 no provisions in it for any payments to the
16 Advertising Trust, that Avis had received five percent
17 of time and mileage from the Alaska licensee's rental
18 operations but they never put any part of those monies
19 into the Advertising Trust, that that amounted to
20 \$100,000 a year back to 1965.

21 And down towards the very bottom, "Should pay
22 to trust on basis of 3.93 contribution with 1.07 going
23 to licensee relations." Exhibit 2

Page 32 of 95

24 And there's some other references in there.
25 But you recall that discussion?

A 45421

EXHIBIT D

Exhibit 2
Page 33 of 95

THE ADVERTISING & POLICY COMMITTEE OF AVIS RENT-A-CAR SYSTEM, ET AL

IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, T E X A S

AVIS RENT-A-CAR SYSTEM,
INC., ET AL

270TH JUDICIAL DISTRICT

A P P E A R A N C E S:

Ms. Paula W. Hinton
Vinson & Elkins
3200 First City Tower
Houston, Texas 77002
For the Plaintiffs

Mr. Robert Harrell
Fulbright & Jaworski
800 MBank Building
Houston, Texas 77002
For the Defendants

* * * * *

ORAL DEPOSITION OF BARRY R. SHAPIRO,
produced at the instance of the plaintiffs in the above-
styled cause on the 18th day of October, 1985, before
Bill McFerron, a Certified Shorthand Reporter in and
for the State of Texas, at the offices of Avis World
Headquarters, 900 Old Country Road, Garden City, New
York, in accordance with the stipulations hereinafter
set forth.

Exhibit 2

Page 34 of 95

1 Committee?

2 A I believe so.

3 Q Did you leave that at Avis when you left Avis?

4 A Yes, ma'am.

5 Q What sort of materials, if you recall, would you
6 receive? Studies, reports, agendas?

7 A I think it would typically be agendas and reports
8 that were intended for delivery to the committee.

9 Q Okay.

10

11 (Plaintiff's Exhibit No. 110 marked
12 for identification.)

13

14 BY MS. HINTON:

15 Q Who is Kenneth Goodkind?

16 A Ken Goodkind is an attorney who reported to me.

17 Q I'd like you to review this memo, please, sir.

18 A Okay. I'd like to make a telephone call.

19 MR. HARRELL: Let's go off the
20 record.

21

22 (Recess)

23

24 BY MS. HINTON:

25 Q Do you think it would be fair to characterize the
Exhibit 2

Page 35 of 95

1 intent behind this memo as predatory?

2 MR. HARRELL: I'm going to object
3 to that question. What does that have to
4 do with anything in this lawsuit?

5 MS. HINTON: We have an allegation
6 of predatory conduct on behalf of the
7 licensor.

8 THE WITNESS: Can I talk to you?

9 MS. HINTON: Please note for the
10 record the witness and Avis' counsel has
11 left the room.

12
13 (Recess)

14
15 MR. HARRELL: Why don't you ask
16 another question, Paula?

17 MS. HINTON: Let me go back and
18 ask the question I asked.

19 Let the record reflect that counsel
20 for Avis and the witness have been gone for,
21 approximately, 20 minutes while discussing
22 these matters that have come up.

23 MR. HARRELL: I don't think it's
24 been 20 minutes, but I will stipulate that
25 we have had an off the record discussion.

Exhibit 2

Page 36 of 95

1 BY MS. HINTON:

2 Q Showing you once again Plaintiff's Exhibit No.
3 110. Have you had an opportunity to review that
4 exhibit, Mr. Shapiro?

5 A Yes, ma'am.

6 Q Do you think it would be fair to characterize
7 the intent behind this memo as predatory?

8 MR. HARRELL: I'm going to object
9 to the question on a number of grounds,
10 including your characterization of it as
11 being predatory. It's a legal conclusion.
12 He doesn't have to give a legal opinion.
13 But more than anything, I'm going to object
14 to his answering questions about Plaintiff's
15 Exhibit No. 110 because it is clear that
16 this is a legal memorandum and the matters
17 that are discussed in this memorandum are
18 protected by the attorney-client privilege.
19 The memorandum was inadvertently produced.

20 MS. HINTON: Okay.

21 BY MS. HINTON:

22 Q Mr. Shapiro, do you refuse to answer my question?

23 A Yes, ma'am.

24 Q Are you relying on advice of Avis' counsel?

25 A Yes, ma'am.

Exhibit 2
Page 37 of 95

1 MS. HINTON: Please certify that
2 question. And let the record reflect that
3 this document was produced by the defendants
4 and is noted as NY0119, Document Number 1456,
5 and this does not appear on the defendants'
6 privileged list.

7 BY MS. HINTON:

8 Q Mr. Shapiro, what is meant by the subject of
9 off-airport rentals?

10 A Generally, that means car rental services pro-
11 vided by operators who do not hold concessions
12 from the airport authority to maintain the
13 counter and facility on the airport.

14 Q Was Avis ever considering -- Let me put it this
15 way. Strike that question.

16 Does Avis have any off-airport rental
17 locations?

18 A Yes, ma'am.

19 Q Why was Avis looking at off-airport rental
20 locations in licensee territories?

21 MR. HARRELL: Sorry?

22 MS. HINTON: If you have an
23 objection, just state it and I'll certify
24 the question.

25 Please let the record reflect that

Exhibit 2

1 Defendants' attorney and the witness left the
2 room once again.

3
4 (Recess)

5
6 THE WITNESS: Could I have the
7 question again, please?

8 MS. HINTON: Would you please read
9 back the question?

10
11 (Question read)

12
13 A The corporation was looking at off-airport rental
14 locations not only in licensee territories, it
15 was looking at off-airport rental locations
16 everywhere.

17 Off-airport operators are typically cut-rate
18 operators and don't provide the full range of
19 services that the major car rental companies and
20 their licensees provide on-airport, and indeed
21 off-airport, as well. And the corporation
22 considered the desirability of forming an off-
23 airport car rental division, if you will,
24 operating under a name other than Avis, which
25 would provide a service not provided -- or would

Exhibit 2

1 service a market not served by the corporation or
2 its licensees. And the corporation studied this
3 issue and for a variety of reasons, one of the
4 principal reasons was the corporation's desire
5 not to take any steps which would violate its
6 licensees' rights or would prejudice their
7 operations, the corporation decided that it
8 would not proceed with an off-airport car rental
9 program.

10 BY MS. HINTON:

11 Q Was the fact that the corporation decided not to,
12 I believe you said, infringe on its licensees the
13 only reason they decided not to go into the
14 off-airport rental operation?

15 A I don't know if it was the only reason. It was
16 certainly a reason.

17 Q Was that the reason why they decided not to
18 establish those off-airport rental locations
19 in licensee territories?

20 A I'm sorry, I don't understand the question.

21 Q Was this reason applicable to the decision with
22 respect to licensee territories and off-airport
23 rental locations?

24 A It could have been. I mean this -- Let me think.
25 I really can't answer that question.

Exhibit 2